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*Agency of Human Services*

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
VERMONT DEPARTMENT OF HEALTH  
DIVISION OF ALCOHOL AND DRUG ABUSE PROGRAMS**

**SEALED BID  
REQUEST FOR PROPOSALS  
FOR**

**SUBSTANCE ABUSE PREVENTION MARKETING,  
COMMUNICATIONS AND PUBLIC EDUCATION**

Expected RFP Schedule	
<b>RFP POSTED</b>	<b>October 5, 2016</b>
<b>BIDDER QUESTIONS IN WRITING DUE</b>	<b>October 14, 2016</b>
<b>RESPONSES TO QUESTIONS ARE POSTED</b>	<b>October 21, 2016</b>
<b>BID PROPOSALS DUE</b>	<b>November 18, 2016</b>
<b>BID OPENING</b>	<b>November 21, 2016 at 10:00 a.m.</b>
<b>BIDDER PRESENTATIONS (by invitation)</b>	<b>December 12, 2016</b>
<b>SELECTION NOTIFICATION</b>	<b>On or before January 13, 2017</b>
<b>ANTICIPATED CONTRACT START DATE</b>	<b>March 1, 2017</b>

LOCATION OF BID OPENING: Vermont Department of Health, 108 Cherry Street, Conference Room 3A, Burlington, VT 05402

Please be advised that all notifications, releases, and amendments associated with this RFP will be posted at: <http://vermontbusinessregistry.com/> and <http://healthvermont.gov/adap/adap.aspx>.

The state will make no attempt to contact Bidders with updated information. It is the responsibility of each Bidder to periodically check <http://vermontbusinessregistry.com/> and <http://healthvermont.gov/adap/adap.aspx> for any and all notifications, releases and amendments associated with the RFP.

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# 1. Overview

## 1.1 Requests for Proposals

The Vermont Department of Health (VDH), Division of Alcohol and Drug Abuse Programs (ADAP) is seeking proposals to provide marketing, communications and public health education services (sometimes called counter-marketing or health promotions) to reduce substance abuse and misuse in Vermont. If a suitable offer is made in response to this Request for Proposals (RFP), VDH may enter into a contract (Contract) to have the selected offeror (the Contractor) perform all or part of the work. This RFP provides details on what is required to submit a proposal in response to this RFP, how VDH will evaluate the proposals, and what will be required of the Contractor in performing the work.

All Bidders on this project must be prequalified for marketing contracts in order to submit an eligible proposal and be considered for this work. Registering with the Vermont Business Registry and Bid System does not prequalify you. Bidders who wish to become prequalified for marketing contracts may submit an application to the State of Vermont Chief Marketing Officer at any time. The Prequalification Application process should be started at a minimum of fifteen (15) business days prior to a scheduled RFP closing date. All completed prequalification applications must be submitted at least ten (10) business days prior to a scheduled RFP closing date for which a Bidder wishes to submit a bid. For more information or to submit a Prequalification Application, visit: [http://cmo.vermont.gov/work\\_with\\_state\\_government](http://cmo.vermont.gov/work_with_state_government).

## 1.2 Background and Need Statement

VDH ADAP employs a comprehensive approach to improve health outcomes and reduce alcohol and other drug related problems. This includes prevention, early intervention, treatment, and recovery services. ADAP works with a statewide network of partners and providers including schools, community coalitions, health care systems, and treatment and recovery centers. The communications strategy is intended to support and augment other evidence-based interventions underway to achieve our objectives.

ADAP's Strategic Plan includes two public health communications goals:

- Increase the public understanding of substance abuse issues and Vermont's system of prevention, treatment and recovery services.
- Develop and implement a limited number of messages to reach targeted populations. Targeted messaging is intended to enhance a comprehensive set of services aimed at these goals:
  - Reduce past-month use of alcohol and illicit substances among adolescents (age 12-17)
  - Reduce percent of individuals age 12 and older engaging in binge drinking
  - Reduce past month misuse of opioids among people age 12 and older
  - Reduce percent of people age 12 and older who needed and did not receive treatment for substance use disorders

### Alcohol

According to the 2015 Vermont Youth Risk Behavior Survey (YRBS), 30% of students in grades 9-12 reported drinking alcohol during the past 30 days, and 16% binged on alcohol (had 5 or more drinks within a couple of hours) during the past 30 days. Research has demonstrated that children who begin drinking alcohol before age 15 are five times more likely to develop alcohol problems than those who start after age 21. According to the 2013-2014 National Survey on Drug Use and Health (NSDUH), 46.8% of 18-25 year-olds in Vermont binged in the past month.

## Marijuana

In Vermont, more teens enter treatment with a primary diagnosis for marijuana dependence than all other illicit drugs combined. According to the 2015 YRBS, 22% of all high school students used marijuana during the past 30 days, and in the past 30 days, nearly a third (31%) of current users reported using marijuana one or two times, and almost half (45%) used marijuana 10 or more times. This is concerning because early and heavy marijuana use is associated with increased injury, declining school and work, substance use disorders later in life, and other negative health outcomes. The 2013-2014 NSDUH identifies Vermont with the second highest rate in the nation of past month marijuana use among 18-25 year-olds at 30.6%, surpassed only by Colorado at 31.2%.

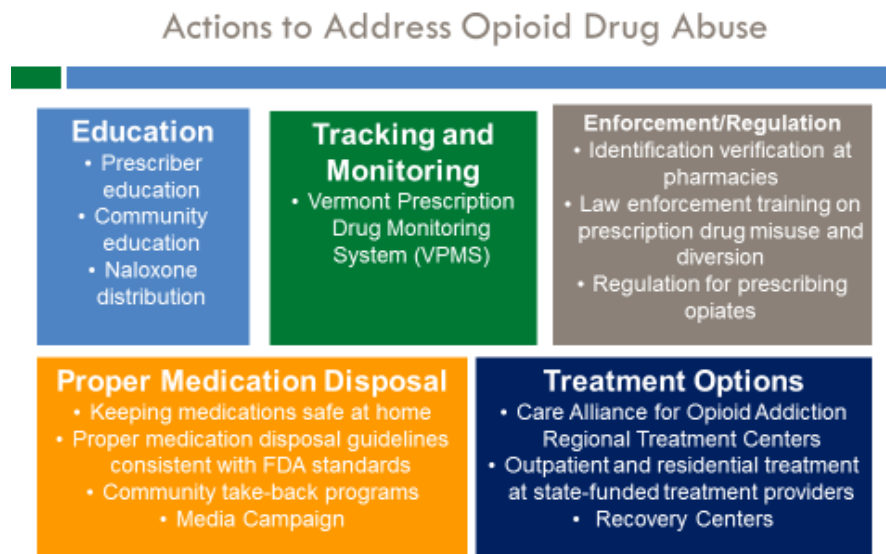
In 2015, the percent of Vermont students in grades 9-12 who think people their age greatly risk harming themselves if they use marijuana regularly is 27%, which significantly decreased from 31% in 2013 (YRBS). Additionally, research indicates that prevalence of use is correlated with perception of risk, in that the lower a person's perception that a substance is risky or harmful, the higher the prevalence of use (Monitoring The Future, 2016).

To date, marijuana specific communication strategies have included publications posted on the VDH website, educational presentations, marijuana prevention messaging on the [ParentUpVT.org](http://ParentUpVT.org) website, and through social media posts.

## Opioids

Prescription drug misuse is a significant public health and public safety issue. In 2015, 11% of students in grades 9-12 reported ever taking a prescription pain reliever or stimulant not prescribed to them (YRBS). According to the 2013-2014 NSDUH, 7.6% of Vermonters ages 18-25 reported non-medical use of prescription pain relievers in the last year. Vermont had the second highest per capita rate of all states for admissions to treatment for prescription opiates in 2011. The majority (60%) of these admissions were young people, 20 to 29 years old.

Vermont's strategy to address opioid abuse and misuse include five key areas: **Education, Monitoring, Regulation, Disposal, and Treatment:**



## 2. Scope of Work and Contractor Responsibilities

The Contractor will be responsible for executing effective strategies and social marketing campaigns to prevent substance abuse and misuse in Vermont. In order to achieve maximum results within the constraints of the budget, it may be necessary to select and use pre-existing media materials (including ones previously developed by VDH, or available through federal or other campaigns), as well as to be able to create new media and promotional materials. While the size of the individual campaigns are dependent upon the allocated budget and funding availability, Contractors will be asked to focus on:

### 1. Marijuana Use Prevention Among Adolescents

- Development, implementation, and evaluation of a parent campaign promoting marijuana-specific messaging, as well as resiliency and alcohol, tobacco, and other drug messaging via the existing [ParentUpVT.org](https://parentupvt.org) platform. Messaging objectives should include that parents are the #1 influence, and understanding the risks associated with adolescent marijuana use.
- Research, development, implementation, and evaluation of a second concurrent campaign targeting youth around the age of initiation, including non-users vulnerable to risk factors and “on the edge” of marijuana use. Messaging objectives should increase the perceived risk of harm from marijuana, and reduce the perception among youth that most people use marijuana.
- Development of information materials for parents and adolescents on the risks of marijuana use, to be distributed at well-care visits through pediatric health care practices, developed in partnership with the Vermont Department of Health Division of Maternal Child Health.

### 2. Opioid Misuse and Overdose Prevention

- Development, implementation, and evaluation of a health education campaign to increase the perception of risk associated with prescription pain reliever misuse, and transition to other opioids such as heroin, targeting Vermont young adults age 18-25. Brand and message concepts have been developed.
- Research, development, implementation, and evaluation of a campaign on the responsible use of prescription pain relievers, targeting adults age 18 and older, focusing on reducing the supply of prescription opioids. Messaging objectives should encourage patients to talk with their doctor about the risks of prescription pain relievers, and promote shared decision-making, including pain management expectations.
- Utilization of existing research for the development, implementation, and evaluation of a campaign targeting health care providers to improve prescriber practices related to prescription drugs. Messaging objectives should align with concurrent or planned opioid campaign messages, promote the proper use of the Vermont Prescription Drug Monitoring System (VPMS), and provide actionable tools and resources to support prescribers with the substance abuse referral process.
- Research, development, implementation, and evaluation of a public campaign on safe storage and disposal of prescription medications, including conducting updated consumer research on the existing “[Vermont's Most Dangerous Leftovers](#)” campaign prior to a media buy.
- Development of information materials for parents and adolescents on the risks of prescription drug abuse, to be distributed at well-care visits through pediatric

health care practices, developed in partnership with the Vermont Department of Health Division of Maternal Child Health.

### 3. Underage and High-Risk Alcohol Use Prevention

- Utilization or expansion on existing creative to purchase and implement paid media strategies promoting [ParentUpVT.org](http://ParentUpVT.org) during April Alcohol Awareness month, or high-risk times throughout the year, including prom, graduation, or the back-to-school season in the fall.
- Development of a strategy proposal for a highly segmented prevention campaign targeting adolescents engaging in underage and/or high-risk drinking behaviors.
- Depending on budget, development of a strategy proposal for a prevention campaign targeting college students engaging in high-risk drinking behaviors.

### 4. Resources on Accessing Substance Abuse Services

- Conducting research on perceptions and barriers to accessing substance abuse services.
- Development and submission of a recommendations report based on research findings.
- Development and promotion of materials or tools for the public on how to access substance abuse treatment services.

Bidders should demonstrate the following:

1. Knowledge of behavior change theories, marketing principles, health communication principles, and existing best practices.
2. Ability to negotiate with Vermont media outlets for economical prices and leverage free (matched) airings.
3. Ability to collect and report evidence of measurable campaign impact.
4. Experience with digital engagement and promotion for behavior change.
5. Ability to provide services consistent with a full service agency: expertise in marketing, strategy development, advertising, public relations, marketing research/formative research, creative development and production, and media planning/buying.

## 2.1 Payment Provisions

The contract will not exceed **\$2,809,000 in total for two (2) years**. The budget table below describes maximum allowable amounts by topic and contract year. Payment terms shall be Net 30 days. Contractor shall be paid based on documentation and itemization of work performed and included in invoicing (see *Section 3.5*).

TOPIC	Contract Year 1 Maximum Allowable Budget	Contract Year 2 Maximum Allowable Budget
Marijuana Use Prevention	\$304,000	\$448,000
Risks of Opioid Use <i>Target Groups: youth and high risk young adults</i>	\$254,000	\$254,000
Responsible Use of Prescription Pain Relievers	\$250,000	\$250,000
Prescriber Practices and Support Tools	\$178,000	\$120,000
Medication Storage and Disposal	\$225,000	\$225,000
Underage and High Risk Alcohol Use Prevention	\$71,000	\$100,000
Resources on Accessing Substance Abuse Services	\$65,000	\$65,000
<b>TOTAL</b>	<b>\$1,347,000</b>	<b>\$1,462,000</b>

## **3. General Provisions**

### **3.1 Contract Terms**

The anticipated contract period will be March 1, 2017 – February 28, 2019 with the option to renew for up to two consecutive one-year periods. The option to renew will be based upon performance of Contractor and continued funding. The selected Contractor(s) will sign a contract with VDH to carry out the specifications and provide the activities detailed in the proposal. Terms and conditions from this RFP and Bidder's response will become part of the contract. This contract will be subject to review throughout its entire term. VDH will consider cancellation upon discovery that the Contractor is in violation of any portion of the agreement, including an inability by the Contractor to provide the products, support and/or service offered in their response.

### **3.2 Contract Award**

VDH may award one or more contracts and reserves the right to make additional awards to the same Bidder or other Bidders who submitted proposals at any time during the first year of the contract if such award is deemed to be in the best interest of VDH.

### **3.3 Ownership of Work Product and Intellectual Capital**

Except for proprietary or commercial software, VDH will have all ownership rights to the documentation designed, developed, and/or utilized for this contract. All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, notes and memoranda, and, written procedures and documents, regardless of the state of completion, which are custom developed and/or are the result of the services required under this contract, shall be and remain the property of VDH and shall be delivered to VDH upon 30 days' notice by VDH. A Bidder shall not sell a work product or deliverable produced under a contract awarded as a result of bids without explicit permission from VDH.

### **3.4 Subcontractors**

Any subcontractors hired by the primary Contractor must adhere to the same standards and contract provisions applicable to the primary Contractor. The primary Contractor retains overall responsibility for contract performance. The primary Contractor must advise VDH of intent to hire a subcontractor and provide the name of company, name of president/owner and location of company. VDH reserves the right to reject the hiring of subcontractor during the term of contract.

### **3.5 Invoicing**

Contractor shall submit signed invoices on a monthly basis for work completed, utilizing a State issued invoice template. The invoice template will include the following information: detail of service(s) rendered; date(s) and hour(s) of work performed; rates of pay, as mutually agreed upon; and a detail of item(s) and cost(s) for any allowable reimbursable expenses (parts, materials, travel, etc.) as mutually agreed upon.

### **3.6 Contractor Performance Guidance**

All Bidders will be held to specific performance review criteria over the life of the contract to ensure that project deliverables as outlined in the RFP and attested to in the Scope of Work are being met. Review of project deliverables will occur at intervals agreed upon by both the

State and the Contractor, and as designated in the contract. Payment of invoices is contingent upon the receipt, review, and approval of required reporting activities, and meeting and/or exceeding of performance milestones.

<b>Desired Outcomes</b>	<b>Activities, Tasks, Services</b>	<b>Performance Measures</b>	<b>Means of Verification</b>
Marijuana use prevention campaigns	Research, development, implementation, and evaluation	Appropriate and agreed upon media or website metrics	Metrics reports or campaign reports
	Development of material for distribution through pediatric health care practices	Completion of at least 1 material with approved key messages to be included in child well-visit packets	Approval of material as reported by our Maternal Child Health partners
Opioid misuse and overdose prevention campaigns	Research, development, implementation, and evaluation	Appropriate and agreed upon media or website metrics	Metrics reports or campaign reports
	Development of material for distribution through pediatric health care practices	Completion of at least 1 material with approved key messages to be included in child well-visit packets	Approval of material as reported by our Maternal Child Health partners
Underage and high-risk alcohol use prevention	ParentUp media strategies	Appropriate and agreed upon media or website metrics	Metrics reports
	Develop a strategy proposal to segment adolescents engaging in high-risk underage drinking behaviors.	Submit strategy proposal (underage/high-risk drinking prevention among adolescents)	Receipt and approval of strategy proposal
	Develop a strategy proposal to segment college students engaging in high risk-drinking behaviors.	Submit strategy proposal (high-risk drinking prevention among college students)	Receipt and approval of strategy proposal
Increase information on accessing substance abuse treatment services	Research on perceptions and barriers to accessing services	Recommendations report based on research findings	Receipt and approval of recommendations report
	Development of materials or tools on how to access services	Completion of at least 1 material or tool reflecting research recommendations	Satisfaction of materials as reported by our substance abuse services partners

### 3.7 Contractor Staffing

Key staff member(s) must be assigned to this contract for the full duration proposed. None of the key staff member(s) may be reassigned or otherwise removed early from this project without explicit written permission of VDH.

The Contractor must identify staff member(s) who will remain on this project until completion, unless indicated otherwise in the Contractor's proposal. The Contractor may propose other staff members as "key" if desired. The Contractor will make every reasonable effort to ensure that the early removal of a key staff member has no adverse impact on the successful completion of this project.

### 3.8 Contractor Responsibilities

The selected Contractor must assume primary responsibility for the implementation of the contract specifications and activities.

**3.8.1** The Contractor will successfully implement the plan to accomplish the tasks described in the Scope of Work.

**3.8.2** The Contractor must abide by all State policies, standards and protocols as provided, and defined in the contract. Before commencing work on the contract, the Contractor must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. **No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.**

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations

- Products and Completed Operations

- Personal Injury Liability

- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence

- \$2,000,000 General Aggregate

- \$1,000,000 Products/Completed Operations Aggregate

- \$1,000,000 Personal & Advertising Injury



*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**3.8.3** The Contractor must abide by all Federal Regulations if applicable to this contract.

## **4. Management Structure and General Information**

### **4.1 Project Management**

The Contractor will be responsible for the project deliverables, schedule, and adherence to contract provisions.

### **4.2 Status Reports**

The Vermont Department of Health reserves the right to call a meeting with the Contractor either in person or by conference call to ensure that unresolved issues are resolved during this contract period. The Contractor will advise the VDH Substance Abuse Information Director when/if performance measures agreed upon will not be met. The following status reports will become part of the contract:

- Monthly budget update – detailed budget overview including current spending amounts for campaigns and/or projects, and remaining budgets.
- Digital metrics of campaign reach and engagement.
- Mid-year and annual presentation/report to VDH Division of Alcohol and Drug Abuse Programs
- Reports/presentations as requested for meetings of VDH, Commissioners, legislative requests

## **5. Proposal Requirements**

### **5.1 General Conditions and Requirements**

This RFP defines the Scope of Work required and work/management structure within which the chosen Contractor must operate. In order to be considered for selection, Bidders must complete all responses to this RFP in the format described in this document. Proposals not meeting the requirements described in this RFP will not be considered.

Cost of proposal development is the sole responsibility of the Bidder.

All bid proposals and submitted information connected to this RFP may be subject to disclosure under the State's access to public records law. The successful Bidder's response will become part of the official contract file. Once the contract is finalized, material associated with its negotiation is a matter of public record except for those materials that are specifically exempted under the law. One such exemption is material that constitutes trade secret, proprietary, or confidential information. If the response includes material that is considered by the Bidder to be proprietary and confidential under 1 V.S.A., Ch. 5 Sec. 317, the Bidder shall clearly designate the material as such prior to bid submission. The Bidder must identify each page or section of the response that it believes is proprietary and confidential and provide a written explanation relating to each marked portion to justify the denial of a public record request should the State receive such a request. The letter must address the proprietary or confidential nature of each marked section, provide the legal authority relied on, and explain the harm that would occur should the material be disclosed. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered and will be returned to the Bidder.

- All proposals shall become the property of the State.
- All public records of VDH/ADAP may be disclosed, except that submitted bid documents shall not be released until the Contractor and ADAP have executed the contract. At that time, the unsuccessful Bidders may request a copy of their own score sheets as well as the apparently successful Bidder's proposal. The name of any Bidder submitting a response shall also be a matter of public record. Other persons or organizations may also make a request at that time or at a later date.
- Consistent with state law, ADAP will not disclose submitted bid documents or RFP records until execution of the contract(s). At that time, upon receipt of a public records request, information about the competitive procurement may be subject to disclosure. ADAP will review the submitted bids and related materials and consider whether those portions specifically marked by a Bidder as falling within one of the exceptions of 1 V.S.A., Ch. 5 Sec. 317 are legally exempt. If, in ADAP's judgment, pages or sections marked as proprietary or confidential are not proprietary or confidential, ADAP will contact the Bidder to provide the Bidder with an opportunity to prevent the disclosure of those marked portions of its bid.

## **5.2 Proposal Format**

The proposal should be prepared simply and economically providing straightforward, concise descriptions of the Bidder's ability to fulfill the requirements of the RFP. Proposals must be no longer than 25 pages, excluding responses to Sections 5.2.1 and 5.2.4, work samples, staff resumes, and the rates pages.

To be considered, each Bidder must submit a complete response to this RFP including:

- Transmittal Letter, Insurance Certificate, Request for Taxpayer Identification Number and Certification IRS Form W-9 and ADAP Contractor Information Summary Form (5.2.1 Response Section I)
- Description of the Bidder's General Background and Qualifications (5.2.2 Response Section II)
- Ability and Approach to Implement the Activities and Specifications of the contract (5.2.3 Response Section III)
- Professional Resume and References (5.2.4 Response Section IV)
- Staffing (5.2.5 Response Section V)
- Proposed Work Plan (5.2.6 Response Section VI)

- Quality Control (5.2.7 Response Section VII)
- Cost Proposal (5.2.8 Response Section VIII)
- Exceptions (5.2.9 Response Section IX)

**5.2.1 Response Section I:** Transmittal Letter, Insurance Certificate, Request for Taxpayer Identification Number & Certification (IRS Form W-9), and ADAP Contractor Information Summary Form

The transmittal letter must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the transmittal letter must include the following statements:

- Statement outlining your acceptance of conditions outlined in the RFP and with the State's contract provisions.
- Statement showing agreement that Bidder's procedures shall be in compliance with all applicable Federal and State laws.
- A statement that the Bidder agrees to the standard State contract requirements in Attachments C, E, if applicable, and F; which are included under Section 7 Attachments.
- A statement that the price was arrived at without conflict of interest.
- A statement of any limitations on the number of hours, days of the week, or weeks in the year that the Bidder would be unavailable to perform the above scope of work.
- A statement of any other considerations or limitations, if any, related to the Scope of Work the Bidder will be expected to perform.
- A statement of any considerations or limitations, if any, related to the geographic service area that the Bidder would be available to service.

Along with the above statements, the Transmittal Letter must include, by attachment, the following information about the Bidder and any proposed subcontractors:

- Name, address, principal place of business, telephone number, and fax number/email address of legal entity or individual with whom contract would be written.
- Legal status of the Bidder (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business, as the entity now substantially exists.
- Location of the facility from which the Bidder would operate.
- Number of years' experience carrying out the activities described in the RFP.
- Demonstration of adequate financial resources and be financially sound as proven by furnishing balance sheet/financial statements, showing that the Bidder has been in business continually for the last three (3) years.
- Provision of a single point managerial level contact to coordinate all State requirements and to be the point of contact for any problems/questions that may arise.
- Insurance Certificate must be included in Response Section I. As part of the proposal packet the Bidder must provide current certificates of insurance. Any questions a Bidder may have concerning the necessary insurance coverage must be raised during the question and answer period set out in Section 5.4 of this document. In the absence of a question, and upon contract negotiations, the apparently successful Bidder must provide a Certificate of Insurance that meets

- the minimum coverage specified in Section 3.8.2 of this document.
- Taxpayer Identification Number & Certification (IRS Form W-9) in Response Section I.
- ADAP Contractor Information Summary Form.

#### **5.2.2 Response Section II: General Background and Qualifications**

Bidder must provide the following information about their company so that VDH can evaluate the Bidder's stability and ability to support the commitments set forth in response to the RFP. The VDH may require additional documentation to support and/or clarify requested information.

- A brief description of the company, including past history, present status, and (if applicable) future plans, etc.
- Company size and organization.
- Disclose any history of defaults, contract terminations, and bankruptcies. If none, please state none.

#### **5.2.3 Response Section III: Ability and Approach to Implement the Activities and Specifications of the RFP**

This section of the proposal will contain the ability and approach that the Bidder will take in implementing the activities and specifications described in this RFP (Section 2, Scope of Work). This section should include activities/tasks the contractor will accomplish along with measurable outcomes.

The Bidder's ***approach (or process)*** should demonstrate the ability to do the following:

- Develop and implement social marketing strategies for preventing substance misuse and abuse.
- Align campaign messages and strategy with public health behavior change theory and best practice.
- Consult with VDH staff and utilize existing research/guidance or best practice proven to be effective with the target population. This may include messages, strategies, or specific promotions with proven outcomes.
- Use research (primary and/or secondary) to build knowledge of the target audience.
- Devise strategies for determining the extent to which the campaign will reach the intended target population, and with what reach and frequency.
- Pre-test materials (existing or newly created) with members of the target audience before executing new phases in a campaign.
- Implement paid media flights to reach the target audience.
- Manage media channels and websites.
- Consult with VDH to establish evaluation goals, and implement an evaluation plan.
- Provide necessary metrics and measurements for programmatic evaluation.
- Provide effective project management through staffing and communication.

Include relevant case studies and work samples in this section, including digital files.

#### **5.2.4 Response Section IV: Professional Resume and References**

Bids shall include a professional resume of the Bidder/individual who will perform the services. Please list key staff and their roles on this project. Bids shall also include references as follows:

- A list of three (3) references including relationship, mailing address, telephone number, and email address.
- Names of organizations for which you have done related work, and contact information for a person at the organization who can speak about your past successes, including their professional title, address, email address, and telephone contact number.

In order to validate the highest-ranking proposal, references may be contacted for further input. These clients may be contacted to determine the quality of the work performed and the personnel assigned to the project. The results of the reference calls will be used by the evaluation team in developing its recommendation for awarding the contract.

### **5.2.5 Response Section V: Staffing**

This section should contain the following information about the Bidder's staffing to support the project.

- Is your organization a **full service agency** with expertise in marketing, strategy development, advertising, public relations, marketing research/formative research, creative development and production, social/digital media and media planning/buying? If no, how do you plan to partner with other consultants and/or organizations to represent a full service agency? Will sub-contractors be used and if so, what are their areas of expertise? Please provide details.
- Does your company have adequate staff time that can be devoted to the Marketing and Communications contract? If no, explain how you propose to obtain adequate staff. If yes, please elaborate.

### **5.2.6 Response Section VI: Proposed Work Plan (Response to Requirements)**

This section should contain the following information about how the Bidder will implement the approach described in Response Section III, to accomplish the goals of the project. Examples of how campaigns will be evaluated should be included. The proposed work plan should also include an estimated budget allocation (including staff time) based on funding thresholds by topic outlined in Section 2.1 of this proposal.

#### Marijuana Use Prevention Among Adolescents

Include key ideas, activities/milestones, and timeframes required for:

- increasing the perception of risk related to adolescent marijuana use, targeting parents.
- increasing the perception of risk related to adolescent marijuana use, targeting youth around the age of initiation of marijuana use.
- developing materials for parents and adolescents on the risks of marijuana use, for distribution at pediatric well-care visits.

#### Opioid Misuse and Overdose Prevention

Include key ideas, activities/milestones, and timeframes required to:

- utilize existing research to develop, implement, and evaluate a highly targeted campaign to increase the perception of risk associated with prescription pain misuse, and transition to other opioids such as heroin, among young adult occasional opioid users.
- research, develop, implement and evaluate a statewide campaign to increase the perception of risk of prescription pain relievers and encourage communication with physicians.

- utilize existing research to develop, implement, and evaluate a campaign targeting health care providers to improve prescriber practices related to prescription drugs, including support tools.
- research, develop, implement, and evaluate a statewide campaign on safe storage and disposal of prescription medications, and conduct updated consumer research on the existing "[Vermont's Most Dangerous Leftovers](#)" campaign.
- develop materials for parents and adolescents on the risks of prescription drug abuse, for distribution at pediatric well-care visits.

#### Underage and High-Risk Alcohol Use Prevention

Include key ideas, activities/milestones, and timeframes required for:

- developing and implementing paid media strategies promoting [ParentUpVT.org](#).
- developing a strategy proposal for a high-risk underage drinking campaign.
- developing a strategy proposal for a high-risk drinking campaign targeting college students.

#### Resources on Accessing Substance Abuse Services

Include key ideas, activities/milestones, and timeframes required for:

- research on perceptions and barriers to accessing substance abuse services.
- developing a recommendations report based on research findings.
- developing and promoting information and resources on how to access substance abuse services.

#### **5.2.7 Response Section VII: Quality Control**

This section of the proposal should contain a description of the Bidder's quality control procedures:

- What are your company's controls and processes for data backups (e.g., on-site and off-site)?
- What are your company's controls and processes for security, such as virus protection, firewalls, building access, and office/file access, etc.?

#### **5.2.8 Response Section VIII: Cost Proposal**

Estimated costs should include a breakdown of staff time, project expenses, etc. in the following format (see budget table by topic in Section 2.1):

Topic Area	Proposed Project Timeframe (MM/YY-MM/YY)	Year 1 Proposed Budget Breakdown* (e.g., FTEs, rates, supplies, travel, etc.)	Year 2 Proposed Budget Breakdown* (e.g., FTEs, rates, supplies, travel, etc.)	Total Proposed Budget

\*Proposed project costs can be provided as a range, so long as the reason for the difference between the high-end and low-end is clearly articulated.

**Provide a list of staff rates based on function.**

#### **5.2.9 Response Section IX: Exceptions**

If the Bidder should choose not to bid on a category of work outlined in Section 2, the Scope of Work, the Bidder's proposal must list the section, clearly explain which category of work is not included in the proposal and why. In the event a Bidder chooses not to include specific categories of work outlined in the Scope of Work, the point system in the evaluation process identified in Section 6.1 will be adjusted accordingly.

### **5.3 Single Point of Contact**

All communications concerning this RFP shall be addressed in writing to the attention of:

Megan Trutor  
Substance Abuse Information Director  
Department of Health  
Division of Alcohol and Drug Abuse Programs  
P.O. Box 70  
108 Cherry Street, Suite 207  
Burlington, VT 05402-0070  
Email: [megan.trutor@vermont.gov](mailto:megan.trutor@vermont.gov)

Attempts by Bidders to contact any other party could result in the rejection of their proposal as determined by VDH.

### **5.4 Question and Answer Period**

Any Bidder requiring clarification of any section of this proposal or wishing to submit questions, comments, or take exception to any requirements or other portion of the RFP may do so according to Section **5.5 RFP Timetable** listed below.

Questions must be emailed to the RFP contact person listed in Section 5.3 of this proposal on or before October 14, 2016. Any clarification, question, objection to the RFP, or to any provision of the RFP not raised in writing on or before the last day of the initial question period of October 14, 2016 by 4:00 p.m. is waived. A copy of all questions or comments and the State's responses will be posted on Vermont Business Registry and the Vermont Department of Health, Alcohol and Drug Abuse Programs websites at <http://vermontbusinessregistry.com/> and <http://healthvermont.gov/adap/adap.aspx>.

Every effort will be made to have these available soon after the question period ends, contingent on the number and complexity of the questions.

### **5.5 RFP Timetable**

The timetable below presents the VDH schedule for this RFP and contracting process. Please note that VDH may change this schedule at any point.

<u>ESTIMATED RFP SCHEDULE</u>	<u>DATE:</u>
<b>RFP Release Date:</b>	<b>October 5, 2016</b>
<b>Bidder Questions in Writing Due</b>	<b>October 14, 2016</b>
<b>ADAP Response to Questions posted by:</b>	<b>October 21, 2016</b>
<b>Bid Proposals Due:</b>	<b>November 18, 2016</b>
<b>Bids Opened:**</b>	<b>November 21, 2016</b>
<b>Bidder Presentations*** (by invitation)</b>	<b>December 12, 2016</b>
<b>Selection Notification Announcement</b>	<b>On or before January 13, 2017</b>
<b>Proposed Start Date for Contract</b>	<b>March 1, 2017</b>

**\*\*A public bid opening will be held at the Vermont Department of Health, 108 Cherry Street, Conference Room 3A, Burlington, VT, at 10:00 a.m. Eastern Time on November 21, 2016.**

**\*\*\*Selected bidders may be asked to present ideas, examples of creative executions, and related experience in person December 12, 2016 in Burlington, Vermont.**

The State reserves the right to accept or reject any or all proposals. Selected State staff will evaluate proposals. If a proposal is selected, the chosen Contractor will be invited to negotiate a contract for all or part of the activities outlined in this RFP.

## **5.6 Proposal Submission**

**An original and seven [7] copies of the bid proposal must be sealed and addressed to:**

Megan Trutor  
Vermont Department of Health  
Division of Alcohol and Drug Abuse Programs  
P.O. Box 70,  
108 Cherry Street, Suite 207  
Burlington, VT 05402-0070

**AND a PDF format of the bid proposal submitted electronically to:**

[ahs.vdhadapcontracts@vermont.gov](mailto:ahs.vdhadapcontracts@vermont.gov) and [megan.trutor@vermont.gov](mailto:megan.trutor@vermont.gov). Submission email subject line must read **Substance Abuse Prevention Marketing RFP** and include the name of the Bidder.

**BID ENVELOPES MUST BE CLEARLY MARKED “SEALED BID.”** Bids not in possession of ADAP identified single point of contact by the due date and time will not be considered and will be returned to the Bidder unopened.

Please note that any and all pages of the Bidder’s proposal containing confidential and proprietary information must be clearly marked “Proprietary and Confidential.” Proposals may not be marked “Proprietary and Confidential” in their entirety.

**The proposal must be organized in the order described above. Use the numbering designations outlined, e.g. Response Sections I, II, III, IV, V, VI, VII, VIII and IX.** The numbering designations will allow evaluators to score areas appropriately. Failure to use number designations may result in scores of zero as reviewers may be unable to find answers that correspond to numbered specifications/requirements. **The closing date for the receipt of bid proposals is November 18, 2016 at 4:00 PM Eastern Standard Time.**

**Bid must be received via email, AND mail or hand delivery, prior to that time.**

Proposals or unsolicited amendments submitted after that time will not be accepted. There are no exceptions to the closing date conditions.

## **5.7 Delivery Methods:**

### **5.7.1 U.S. Mail**

Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Division of Alcohol and Drug Abuse Programs prior to the closing date and time for receipt of proposals.



### **5.7.2 Express Delivery**

If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received prior to the closing date and time for receipt of proposals, and time stamped by the Division of Alcohol and Drug Abuse Programs.

### **5.7.3 Hand Delivery**

Hand carried bids shall be delivered to a representative of the Division prior to the closing date and time for receipt of proposals.

**5.7.4 ELECTRONIC/EMAIL:** In addition to physical delivery, all bids must be sent electronically to [AHS.VDHADAPContracts@vermont.gov](mailto:AHS.VDHADAPContracts@vermont.gov) and [megan.trutor@vermont.gov](mailto:megan.trutor@vermont.gov) prior to the closing date and time for receipt of proposals.

**Faxed bids will not be accepted.**

VDH may, at any time and at its sole discretion and without penalty, reject any and all proposals and issue no contract as a result of this RFP. Furthermore, a proposal may be rejected for one or more of the following reasons or for any other reason deemed to be in the best interest of the State:

- The failure of the Bidder to adhere to one or more provisions established in this RFP.
- The failure of the Bidder to submit required information in the format specified in this RFP.
- The failure of the Bidder to adhere to generally accepted ethical and professional principles during the RFP process.

If a proposal is selected for final consideration, the Bidder will be invited to negotiate a contract.

The State reserves the right to amend the RFP at any time prior to the proposal due date by issuing written addenda. Amendments, addenda, questions and answers and any relevant information will be posted at:

Vermont Business Registry at <http://vermontbusinessregistry.com/> and the Vermont Department of Health, Division of Alcohol and Drug Abuse Programs at <http://healthvermont.gov/adap/adap.aspx>.

It is the Bidders' responsibility to check periodically for such information.

Read all instructions carefully. If you do not comply with any part of this RFP, VDH may, at its sole discretion, reject your proposal as non-responsive. VDH reserves the right to waive any requirements contained in this RFP.

## **6. Proposal Evaluation**

### **6.1 General Evaluation Process**

VDH will conduct a comprehensive and impartial evaluation of proposals received in response to this RFP. Proposals must comply with the instructions to Bidders contained in **Section 5: Proposal Requirements**. Failure to comply with the instructions shall deem the proposal

non-responsive and subject to rejection without further consideration. The State reserves the right to waive irregularities.

In the event a Bidder chooses not to include specific categories of work outlined in Section 2, the Scope of Work, the point system outlined in Criteria for Scoring below will be adjusted accordingly.

The following are the components and point system for the evaluation:

Criteria for Scoring	Total Points
<b>5.2.1 Response Section I (1 point total)</b>	
Transmittal Letter, Insurance Certificate, Request for Taxpayer Identification Number & Certification (IRS Form W-9), and ADAP Contractor Information Summary Form	1
<b>5.2.2 Response Section II: Background and Qualifications (9 points total)</b>	
Brief description of the company	5
Company size and organization	3
History of defaults, contract terminations, or bankruptcies	1
<b>5.2.3 Response Section III: Ability to Implement Activities (30 points total)</b>	
Develop and implement social marketing strategies	4
Align campaign messages and strategy with public health behavior change theory and best practice	2
Consult with VDH staff and utilize existing research/guidance or best practice proven to be effective with the target population (may include messages, strategies, or promotions with proven outcomes)	2
Use research (primary and/or secondary) to build knowledge of the target audience	2
Devise strategies to determine campaign reach the intended target population	4
Pre-test materials with members of the target population before executing new phases	2
Implement paid digital media flights	3
Manage media channels and websites	2
Establish evaluation goals and an evaluation plan	4
Provide necessary metrics and measurements for programmatic evaluation	4
Provide effective project management through staffing and communication	1
<b>5.2.4 Response Section IV: Professional Resume and References (3 points total)</b>	
Key staff and their roles on this project	1
Three (3) references including relationship and contact information	1
Names and contact information of organizations for which Bidder has done related work	1
<b>5.2.5 Response Section V: Staffing (8 points total)</b>	
Full service agency with expertise in marketing, strategy development, advertising, public relations, marketing research/formative research, creative development and production, social/digital media and media planning/buying	5
Adequate staff time devoted to the Marketing and Communications contract	3
<b>5.2.6 Response Section VI: Proposed Work Plan (30 points total)</b>	
Marijuana Use Prevention Among Adolescents	10
Opioid Misuse and Overdose Prevention	10
Underage and High-Risk Alcohol Use Prevention	6
Resources on Accessing Substance Abuse Services	4
<b>5.2.7 Response Section VII: Quality Control (4 points total)</b>	
Controls and processes for data backups	2
Controls and processes for security (e.g. virus protection, firewalls, office/file access)	2
<b>5.2.8 Response Section VIII: Cost Proposal (15 points total)</b>	
Breakdown of staff time and project expense estimates in the identified format	15

All documents related to this bidding process, including Bidders' proposals and the evaluation review team's score sheets, are considered public domain and copies may be requested after the contract has been awarded.

#### 6.1.1. Minimum Requirements

Each proposal will be reviewed to ensure it is sufficiently responsive to the RFP to allow a complete evaluation on the following:

- The proposal must have been received electronically and in paper form by the due date, hour (Eastern Standard Time), and in the number of copies specified in Section 5.6.
- The proposal must contain the following items in the following order:
  - Response Section I: Transmittal Letter, Insurance Certificate, Request for Taxpayer Identification Number and Certification IRS Form W-9 and ADAP Contractor Information Summary Form
  - Response Section II: General Background and Qualifications
  - Response Section III: Ability and Approach to Implement the Activities and Specifications of the RFP
  - Response Section IV: Professional Resume and References
  - Response Section V: Staffing
  - Response Section VI: Proposed Work Plan
  - Response Section VII: Quality Control
  - Response Section VIII: Cost Proposal
  - Response Section IX: Exceptions

The State reserves the right to reject any and all proposals.

#### **6.1.2. Finalists Presentations**

The State reserves the right to request on-site demonstrations in Burlington, Vermont from bidders prior to the selection of a Contractor.

**6.1.3. Evaluation of the Financial Proposals:** The financial proposals will be examined to determine if it meets requirements and is consistent with industry pricing.

***Any pricing proposals that are incomplete, exceeds \$2,809,000 in total, or in which there are significant inconsistencies or inaccuracies may be rejected by the State.***

#### **6.1.4 Award**

The State reserves the right to accept or reject any or all proposals. Upon completion of the evaluation process, the State will select a Bidder based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of VDH. The selected Bidder will be requested to enter into negotiation with the State of Vermont on contract specifications, including detailed work plans, deliverables and timetables.

In the event that VDH is not successful in negotiating a contract with a selected Bidder, VDH reserves the option of negotiating with another Bidder. Any contract negotiated must undergo review and signature according to statute and policy. **The contract is for two years. The contract may be renewed without rebidding for up to two additional one-year periods with approval from the Administration.** Award of a contract and any renewals thereof are contingent upon availability of funds.

Penalties and/or Retainage may be a condition of this contract.

#### **6.1.5 Scoring Information**

The VDH evaluation review team will evaluate proposals based on the criteria listed in Section 6.1.

## **7. Attachments**

Attachment C:	Standard State Provisions for Contracts and Grants
Attachment E:	Business Associate Agreement, if applicable
Attachment F:	Agency of Human Services Customary Contract Provisions
Appendix I:	ADAP Contractor Information Summary Form

**ATTACHMENT C: STANDARD  
STATE PROVISIONS FOR  
CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance

of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations

- Products and Completed Operations

- Personal Injury Liability

- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence

- \$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year

and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

**B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**C. Mandatory Disclosures:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. “Records” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**



- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for

work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

ATTACHMENT E  
**BUSINESS ASSOCIATE AGREEMENT (IF APPLICABLE)**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its \_\_\_\_\_ **[Insert Name of AHS Department, Office or Division]** (“Covered Entity”) and **[Insert Name of Contractor/Grantee]** (“Business Associate”) as of \_\_\_\_\_ (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“Breach” means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate shall have the meaning given in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

**2. Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity's contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

**3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

**4. Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

**5. Safeguards.** Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted

by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

## **6. Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

**7. Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate

shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

**8. Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

**9. Agreements with Subcontractors.** Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended

third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

**10. Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

**11. Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

**12. Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

**13. Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

**14. Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified



by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

**15. Return/Destruction of PHI.**

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

**16. Penalties and Training.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

**17. Security Rule Obligations.** The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business

Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**18. Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain

from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)

**ATTACHMENT F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS**

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at [www.vermont211.org](http://www.vermont211.org)

3. **Medicaid Program Contractors:**

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP* (Automated Data Processing) *System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166

of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.
7. **Privacy and Security Standards.**

**Protected Health Information:** The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

**Substance Abuse Treatment Information:** The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

**Other Confidential Consumer Information:** The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

**Social Security numbers:** The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in

Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days' notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the

Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.
14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients.

Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

*Attachment F - Revised AHS -12/10/10*



## Appendix I: ADAP Contractor Information Summary

**Contractor:** The Contractor will oversee the activities outlined in the contract, receive the funds, manage the money and report finances to ADAP, unless there is a Fiscal Agent.

Is the Contractor and Fiscal Agent the same? ☐ YES ☐ NO

*Note: The Vermont Department of Health Business Office mails contract paperwork (copies for signature, final copies, invoices, etc.) to the Fiscal Agent. Checks/electronic deposits will be issued to the fiscal agent listed on this form.*

**Contractor Name and D/B/A Name if different:**

*(Full legal name of organization responsible for fiscal management)*

Federal Tax ID: Vermont Tax ID:

Form of Business Organization:

Indirect Cost/Cost Allocation Plan Rate: Federally Approved: ☐ YES ☐ NO  
(U.S. Health & Human Services Cost Allocation Services)

Remit To Address: **Street:**

**City:**

**State:**

**Zip:**

Business Office Contact:

Phone:

Ext: Email:

Contact person for e-mail reminders about reporting: Contact:

Phone:

Ext:

Email:

**CEO/Executive Director:**

*(Organization's senior staff member that has the authority to legally sign the grant/contract agreement)*

Name:

Title:

Contact Information: Email:

Phone:

**Fiscal Agent Organization Name:** *The Fiscal Agent will receive the check, manage the money and report finances to ADAP.*

Name of Fiscal Agent:

Title:

Mailing Address: **Street:**

**City:**

**State:**

**Zip:**

Phone:

Ext:

E-mail:

**Attachments:** Contractor must submit the following items with this form:

1. W-9 Tax Form (**updated and within 6 months of pending contract or amendment**)
2. Certificate of Liability Insurance, per Attachment C, that covers the following:
  - a. General Liability
  - b. Automobile Liability
  - c. Worker's Compensation
  - d. Professional Liability Insurance Certificate (if Applicable)

*To request a copy of Attachment C for insurance requirements, please e-mail*  
[adap.contracts@state.vt.us](mailto:adap.contracts@state.vt.us)

CONTRACTOR must be registered with the Vermont Secretary of State to do business in Vermont. If you are not registered to do business in the State of Vermont, please go to <http://corps.sec.state.vt.us/> for more information.

CONTRACTOR must check with the Vermont Department of Taxes (802)828-2551 or <http://www.state.vt.us/tax/index.shtml> regarding a Vermont Tax ID.